

## **ASSESSMENT DECISION NOTICE**

### **NO BREACH OF THE CODE**

**Reference:** CCN015/18 /19(i)

**Complainant:** Mr Kevin Johnson

**Subject Member:** Cllr Andy Webb, St. Cleer Parish Council

**Person conducting the Assessment:** Simon Mansell, Corporate & Information Governance Manager

**Date of Assessment:** 26 September 2018

#### **Complaint**

On 26 September 2018 the Monitoring Officer considered a complaint from Mr Kevin Johnson concerning the alleged conduct of Cllr Andy Webb of St. Cleer Parish Council. A general summary of the complaint is set out below:

The Complainant has set out that at a meeting of the Parish Council held on 8 August 2018 the Subject Member submitted a motion to Council that the Complainant stop filming which the Complainant considers was ultra vires.

#### **Decision**

That, for the reasons as set out in this notice there has been no breach of the Code of Conduct and no further action needs to be taken.

#### **Reasons for the Decision**

In assessing this complaint I have had regard to the following:

- The complaint;
- A response from the Subject Member; and
- The views of the Independent Person assigned to this matter.

The Complainant has set out that at a meeting of the Parish Council held on 8 August 2018 the Subject Member gave inaccurate and misleading verbal commentary which may have influenced the vote on a motion to Council that the Complainant stop filming which the Complainant considers was ultra vires.

The Subject Member has responded to this complaint by setting that she supported the proposal to stop filming as the Complainant was causing a distraction to the meeting waving his camera on the end of a telescopic pole. .

#### *Application of the Code of Conduct*

I am satisfied that for the purposes of this complaint that the Subject Member was acting in his official capacity at the time of the alleged conduct and was therefore bound by the Code of Conduct.

#### *Findings of fact*

In considering the findings of fact decisions are based on the balance of probabilities, that is, would a reasonable person in possession of all the facts objectively consider that a breach of the Code of Conduct has occurred.

I have noted the comment made by the Complainant and the response by the Subject Member. In particular I have noted that the motion was accepted by the Council and that the decision to stop the filming became a Council decision and was not something that could then be attributed to an individual.

The Code of Conduct can only consider if the actions of individual members, and not decisions that are made by a Council, as the jurisdiction of the Code does not extend to such decision.

In considering if the actions of the Subject Member; it is considered that a member should be free to reflect on the situation as they see it and set out points which they consider are correct. The Code cannot cover perceived inaccurate comments that someone may disagree with otherwise the words and deeds of all 2,000 Councillors would come under scrutiny and this would stifle debate. Additionally Article 10(2) allows a member to make incorrect but honestly held beliefs. The Complainant may not have liked the decision made by the Council but the ethical standards regime is not the route to challenge it.

As a result as it is considered that the actions of the Subject Member do not amount to a breach of the Code.

#### *Actions to remedy the breach*

As no breach of the Code has occurred no further action needs to be taken.

#### **What happens now?**

This decision notice is sent to the Complainant, the member against whom the allegation has been made and the Clerk to St. Cleer Parish Council.

## **Right of review**

At the written request of the Complainant, the Monitoring Officer can review and is able to change a decision not to refer an allegation for investigation or other action. To ensure impartiality in the conduct of the review different officers to those involved in the original decision will undertake the review.

We must receive a written request from the Complainant to review this decision within 15 days from the date of this notice, explaining in detail on what grounds the decision should be reviewed.

If we receive a request for a review, we will write to all the parties mentioned above, notifying them of the request to review the decision.

## **Additional help**

If you have difficulty reading this notice we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010.

We can also help if English is not your first language.



**Simon Mansell, Corporate and Information Governance Manager**

On behalf of the Monitoring Officer

Date: 26 September 2018